

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

<b>EVELYN DENISE MOSE</b>	<b>:</b>	<b>DOCKET NO. 12-CV-1539</b>
<b>VS.</b>	<b>:</b>	<b>JUDGE TRIMBLE</b>
<b>ESTES LEDOUX</b>	<b>:</b>	<b>MAGISTRATE JUDGE KAY</b>

**REPORT AND RECOMMENDATION**

Before the court is defendant, Estes Ledoux's, Motion for Order of Compliance and Alternative Dismissal for Failure to Comply with 12(e) Order. Doc. 6. For the following reasons, the court recommends that the motion be GRANTED and all federal claims by plaintiff, Evelyn Denise Mose, be DISMISSED WITH PREJUDICE.

**Background**

On August 31, 2012 this court issued a Memorandum Order granting defendant's motion for a more definite statement (doc. 3) and ordering plaintiff to file an amended complaint within thirty (30) days of the date of the order. Doc. 5. In its Memorandum Order, this court found that plaintiff's allegations in her petition concerning violations of federal law were "ambiguous and prevent[ed] defendant from filing a complete and responsive answer." *Id.* p. 2. Plaintiff was ordered to "specify each constitutional right she claimed defendant violated and allege specific facts that substantiate such allegations." *Id.* Plaintiff's deadline to comply with the order was September 30, 2012. Plaintiff has failed to comply with this court's order; consequently, defendant has filed the motion currently before the court.

**Law and Analysis**

Federal Rule of Civil Procedure 12(e) provides in part, “[i]f the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.” After a party is given time to amend a defective pleading, the court may strike the pleading or dismiss the case. *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 103 (5th Cir. 1995).

Defendant has not asked that the court strike plaintiff’s entire pleading. Instead defendant asks the court to either issue an Order of Compliance giving plaintiff an additional five days to comply with its August 31, 2012, order to amend her pleading or to strike the ambiguous federal claims in plaintiff’s complaint. Doc. 6.

Here, the court gave plaintiff thirty days to amend her complaint rather than the fourteen days as required by statute. Plaintiff has made no attempt whatsoever to amend her complaint or abide by this court’s order and the court determines that granting additional time to amend would be futile. Accordingly, the court finds that defendant’s motion should be granted and the court recommends that any and all references to violations of federal law be stricken from plaintiff’s complaint. In particular, the court finds that the paragraph wherein plaintiff alleges violations of “the equal protection of the laws of equal privileges and immunities under the laws [sic] by unlawfully terminating the plaintiff based on plaintiff’s race and national origin” [doc. 1, att. 1, ¶12] should be stricken.

Finally, since we recommend that all federal claims be stricken, plaintiff’s complaint will consist solely of state law claims over which we have no subject matter jurisdiction.<sup>1</sup> Thus, we

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<sup>1</sup> The Notice of Removal alleges jurisdiction based on “28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights jurisdiction), and 28 U.S.C. §1367 (supplemental jurisdiction).” Doc. 1, ¶ 4.

further recommend that this matter be remanded to the Thirty-Third Judicial District, Parish of Allen, State of Louisiana.


**Conclusion**

For the foregoing reasons, it is **ORDERED** that defendant's Motion for Order of Compliance and Alternative Dismissal for Failure to Comply with 12(e) Order [doc. 6] be **GRANTED** and all federal claims asserted by plaintiff be **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that this matter be **REMANDED** to the Thirty-Third Judicial District, Parish of Allen, State of Louisiana.

**IT IS FURTHER ORDERED** that this Order shall be **STAYED** for a period of fourteen days, pending any appeal to the District Judge. If an appeal is taken to the District Judge, the Order shall remain stayed until the appeal is decided. If no timely appeal is filed, the Clerk shall refer the action forthwith.

THUS DONE AND SIGNED in Chambers this 8<sup>th</sup> day of November, 2012.

  
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KATHLEEN KAY  
UNITED STATES MAGISTRATE JUDGE